

CHAPTER 207

INSURANCE

HOUSE BILL 14-1344

BY REPRESENTATIVE(S) Rosenthal, Conti, Hulinghorst, Moreno, Pabon, Pettersen, Scott, Sonnenberg, Williams;
also SENATOR(S) Tochtrop.

AN ACT

**CONCERNING THE USE OF ELECTRONIC MEANS TO DOCUMENT TRANSACTIONS RELATED TO THE
BUSINESS OF INSURANCE.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 10-1-137 and 10-1-138 as follows:

10-1-137. Electronic delivery of documents - when permitted - definitions - consent - construction with other laws. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) DELIVERED OR DELIVERY "BY ELECTRONIC MEANS" TO A PARTY INCLUDES:

(I) DELIVERY TO AN ELECTRONIC MAIL ADDRESS AT WHICH THE PARTY HAS CONSENTED TO RECEIVE NOTICES OR DOCUMENTS; AND

(II) POSTING ON AN ELECTRONIC NETWORK OR WEB SITE ACCESSIBLE TO THE PARTY VIA THE INTERNET, MOBILE APPLICATION, COMPUTER, MOBILE DEVICE, TABLET, OR ANY OTHER ELECTRONIC DEVICE IF THE PARTY IS GIVEN SEPARATE NOTICE OF THE POSTING BY EITHER:

(A) ELECTRONIC MAIL TO THE ELECTRONIC MAIL ADDRESS AT WHICH THE PARTY HAS CONSENTED TO RECEIVE NOTICE; OR

(B) ANY OTHER DELIVERY METHOD THAT HAS BEEN CONSENTED TO BY THE PARTY.

(b) "PARTY" MEANS ANY RECIPIENT OF A NOTICE OR DOCUMENT REQUIRED AS

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

PART OF AN INSURANCE TRANSACTION. THE TERM INCLUDES AN APPLICANT, AN INSURED, A POLICYHOLDER, AND AN ANNUITY CONTRACT HOLDER.

(2) SUBJECT TO SUBSECTION (4) OF THIS SECTION, ANY NOTICE TO A PARTY OR ANY OTHER DOCUMENT REQUIRED UNDER APPLICABLE LAW IN AN INSURANCE TRANSACTION OR THAT IS TO SERVE AS EVIDENCE OF INSURANCE COVERAGE MAY BE DELIVERED, STORED, AND PRESENTED BY ELECTRONIC MEANS IF IT MEETS THE REQUIREMENTS OF THE "UNIFORM ELECTRONIC TRANSACTIONS ACT", ARTICLE 71.3 OF TITLE 24, C.R.S.

(3) DELIVERY OF A NOTICE OR DOCUMENT IN ACCORDANCE WITH THIS SECTION IS EQUIVALENT TO ANY DELIVERY METHOD REQUIRED UNDER APPLICABLE LAW, INCLUDING DELIVERY BY FIRST CLASS MAIL; FIRST CLASS MAIL, POSTAGE PREPAID; CERTIFIED MAIL; CERTIFICATE OF MAIL; OR CERTIFICATE OF MAILING.

(4) A NOTICE OR DOCUMENT MAY BE DELIVERED BY ELECTRONIC MEANS BY AN INSURER TO A PARTY UNDER THIS SECTION IF:

(a) THE PARTY HAS AFFIRMATIVELY CONSENTED TO THAT METHOD OF DELIVERY AND HAS NOT WITHDRAWN THE CONSENT;

(b) THE PARTY, BEFORE GIVING CONSENT, IS PROVIDED WITH A CLEAR AND CONSPICUOUS STATEMENT INFORMING THE PARTY OF:

(I) ANY RIGHT OR OPTION OF THE PARTY TO HAVE THE NOTICE OR DOCUMENT PROVIDED OR MADE AVAILABLE IN PAPER OR ANOTHER NONELECTRONIC FORM;

(II) THE RIGHT OF THE PARTY TO WITHDRAW CONSENT TO HAVE A NOTICE OR DOCUMENT DELIVERED BY ELECTRONIC MEANS AND ANY CONDITIONS OR CONSEQUENCES IMPOSED IF THE CONSENT IS WITHDRAWN;

(III) WHETHER THE PARTY'S CONSENT APPLIES:

(A) ONLY TO THE PARTICULAR TRANSACTION AS TO WHICH THE NOTICE OR DOCUMENT MUST BE GIVEN; OR

(B) TO IDENTIFIED CATEGORIES OF NOTICES OR DOCUMENTS THAT MAY BE DELIVERED BY ELECTRONIC MEANS DURING THE COURSE OF THE PARTY'S RELATIONSHIP WITH THE INSURER;

(IV) THE MEANS, AFTER CONSENT IS GIVEN, BY WHICH THE PARTY MAY OBTAIN A PAPER COPY OF A NOTICE OR DOCUMENT DELIVERED BY ELECTRONIC MEANS; AND

(V) THE PROCEDURE A PARTY MUST FOLLOW TO WITHDRAW CONSENT TO HAVE A NOTICE OR DOCUMENT DELIVERED BY ELECTRONIC MEANS AND TO UPDATE INFORMATION NEEDED TO CONTACT THE PARTY ELECTRONICALLY;

(c) THE PARTY:

(I) BEFORE GIVING CONSENT, IS PROVIDED WITH A STATEMENT OF THE HARDWARE AND SOFTWARE REQUIREMENTS FOR ACCESS TO AND RETENTION OF A NOTICE OR

DOCUMENT DELIVERED BY ELECTRONIC MEANS; AND

(II) CONSENTS ELECTRONICALLY, OR CONFIRMS CONSENT ELECTRONICALLY, IN A MANNER THAT REASONABLY DEMONSTRATES THAT THE PARTY CAN ACCESS INFORMATION IN THE ELECTRONIC FORM THAT WILL BE USED FOR NOTICES OR DOCUMENTS DELIVERED BY ELECTRONIC MEANS AS TO WHICH THE PARTY HAS GIVEN CONSENT; AND

(d) IF, AFTER THE PARTY CONSENTS, A CHANGE IN THE HARDWARE OR SOFTWARE REQUIREMENTS NEEDED TO ACCESS OR RETAIN A NOTICE OR DOCUMENT DELIVERED BY ELECTRONIC MEANS CREATES A MATERIAL RISK THAT THE PARTY WILL NOT BE ABLE TO ACCESS OR RETAIN A SUBSEQUENT NOTICE OR DOCUMENT TO WHICH THE CONSENT APPLIES, THE INSURER:

(I) PROVIDES THE PARTY WITH A STATEMENT OF:

(A) THE REVISED HARDWARE AND SOFTWARE REQUIREMENTS FOR ACCESS TO AND RETENTION OF A NOTICE OR DOCUMENT DELIVERED BY ELECTRONIC MEANS; AND

(B) THE RIGHT OF THE PARTY TO WITHDRAW CONSENT WITHOUT THE IMPOSITION OF ANY CONDITION OR CONSEQUENCE THAT WAS NOT DISCLOSED UNDER SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION (4); AND

(II) PROVIDES THE PARTY WITH A COMPLETE AND UPDATED VERSION OF THE INFORMATION LISTED IN PARAGRAPH (b) OF THIS SUBSECTION (4).

(5) THIS SECTION DOES NOT AFFECT ANY REQUIREMENT RELATED TO THE CONTENT OR TIMING OF A NOTICE OR OTHER DOCUMENT REQUIRED UNDER APPLICABLE LAW.

(6) IF A PROVISION OF THIS TITLE OR OTHER APPLICABLE LAW REQUIRING A NOTICE OR DOCUMENT TO BE PROVIDED TO A PARTY EXPRESSLY REQUIRES VERIFICATION OR ACKNOWLEDGMENT OF RECEIPT OF THE NOTICE OR DOCUMENT, THE NOTICE OR DOCUMENT MAY BE DELIVERED BY ELECTRONIC MEANS ONLY IF THE METHOD USED PROVIDES FOR VERIFICATION OR ACKNOWLEDGMENT OF RECEIPT.

(7) THE LEGAL EFFECTIVENESS, VALIDITY, OR ENFORCEABILITY OF ANY CONTRACT OR POLICY OF INSURANCE EXECUTED BY A PARTY SHALL NOT BE DENIED SOLELY BECAUSE OF THE FAILURE TO OBTAIN ELECTRONIC CONSENT OR CONFIRMATION OF CONSENT OF THE PARTY IN ACCORDANCE WITH SUBPARAGRAPH (II) OF PARAGRAPH (c) OF SUBSECTION (4) OF THIS SECTION.

(8) (a) A WITHDRAWAL OF CONSENT BY A PARTY:

(I) DOES NOT AFFECT THE LEGAL EFFECTIVENESS, VALIDITY, OR ENFORCEABILITY OF A NOTICE OR DOCUMENT DELIVERED BY ELECTRONIC MEANS TO THE PARTY BEFORE THE WITHDRAWAL OF CONSENT IS EFFECTIVE; AND

(II) IS EFFECTIVE WITHIN A REASONABLE PERIOD OF TIME AFTER RECEIPT OF THE WITHDRAWAL BY THE INSURER.

(b) AN INSURER'S FAILURE TO COMPLY WITH PARAGRAPH (d) OF SUBSECTION (4) OF THIS SECTION MAY BE TREATED, AT THE ELECTION OF THE PARTY, AS A WITHDRAWAL OF CONSENT FOR PURPOSES OF THIS SECTION.

(9) THIS SECTION DOES NOT APPLY TO A NOTICE OR DOCUMENT DELIVERED BY ELECTRONIC MEANS BEFORE THE EFFECTIVE DATE OF THIS SECTION TO A PARTY WHO, BEFORE THAT DATE, HAD CONSENTED TO RECEIVE NOTICE OR DOCUMENTS IN AN ELECTRONIC FORM OTHERWISE ALLOWED BY LAW.

(10) IF THE CONSENT OF A PARTY TO RECEIVE CERTAIN NOTICES OR DOCUMENTS IN AN ELECTRONIC FORM IS ON FILE WITH AN INSURER BEFORE THE EFFECTIVE DATE OF THIS SECTION AND THE INSURER INTENDS TO DELIVER ADDITIONAL NOTICES OR DOCUMENTS TO SUCH PARTY IN AN ELECTRONIC FORM PURSUANT TO THIS SECTION, THEN, BEFORE DELIVERING THE ADDITIONAL NOTICES OR DOCUMENTS BY ELECTRONIC MEANS, THE INSURER SHALL NOTIFY THE PARTY OF:

(a) ANY NOTICES OR DOCUMENTS THAT MAY BE DELIVERED BY ELECTRONIC MEANS UNDER THIS SECTION THAT WERE NOT PREVIOUSLY DELIVERED ELECTRONICALLY; AND

(b) THE PARTY'S RIGHT TO WITHDRAW CONSENT TO HAVE NOTICES OR DOCUMENTS DELIVERED BY ELECTRONIC MEANS.

(11)(a) EXCEPT AS OTHERWISE PROVIDED BY LAW, IF AN ORAL COMMUNICATION OR A RECORDING OF AN ORAL COMMUNICATION FROM A PARTY CAN BE RELIABLY STORED AND REPRODUCED BY AN INSURER, THE ORAL COMMUNICATION OR RECORDING QUALIFIES AS A NOTICE OR DOCUMENT DELIVERED BY ELECTRONIC MEANS FOR PURPOSES OF THIS SECTION.

(b) IF A PROVISION OF THIS TITLE OR OTHER APPLICABLE LAW REQUIRES A SIGNATURE OR NOTICE OR DOCUMENT TO BE NOTARIZED, ACKNOWLEDGED, VERIFIED, OR MADE UNDER OATH, THE REQUIREMENT IS SATISFIED IF THE ELECTRONIC SIGNATURE OF THE PERSON AUTHORIZED TO PERFORM THOSE ACTS, TOGETHER WITH ALL OTHER INFORMATION REQUIRED TO BE INCLUDED BY THE PROVISION, IS ATTACHED TO OR LOGICALLY ASSOCIATED WITH THE SIGNATURE, NOTICE, OR DOCUMENT.

(12) (a) THIS SECTION SHALL NOT BE CONSTRUED TO MODIFY, LIMIT, OR SUPERSEDE THE PROVISIONS OF THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT", PUB.L. 106-229, AS AMENDED.

(b) IN THE EVENT OF ANY CONFLICT BETWEEN THIS SECTION AND THE "UNIFORM ELECTRONIC TRANSACTIONS ACT", ARTICLE 71.3 OF TITLE 24, C.R.S., THIS SECTION CONTROLS.

10-1-138. Internet posting of standard insurance provisions - conditions - notice of revisions. (1) NOTWITHSTANDING ANY PROVISION OF SECTION 10-1-137 TO THE CONTRARY, STANDARD INSURANCE POLICIES AND ENDORSEMENTS THAT DO NOT CONTAIN PERSONALLY IDENTIFIABLE INFORMATION MAY BE MAILED, DELIVERED, OR POSTED ON THE INSURER'S WEB SITE. IF THE INSURER ELECTS TO POST INSURANCE POLICIES AND ENDORSEMENTS ON ITS WEB SITE IN LIEU OF MAILING OR

DELIVERING THEM TO THE INSURED, IT SHALL COMPLY WITH ALL OF THE FOLLOWING CONDITIONS:

(a) THE POLICY AND ENDORSEMENTS MUST BE ACCESSIBLE ON THE WEB SITE AND REMAIN SO FOR AS LONG AS THE POLICY IS IN FORCE;

(b) THE POLICIES AND ENDORSEMENTS MUST BE POSTED IN A MANNER THAT ENABLES THE INSURED TO PRINT AND SAVE THE POLICY AND ENDORSEMENTS USING PROGRAMS OR APPLICATIONS THAT ARE WIDELY AVAILABLE ON THE INTERNET AND FREE TO USE;

(c) THE INSURER SHALL PROVIDE THE FOLLOWING INFORMATION IN, OR SIMULTANEOUSLY WITH, EACH DECLARATIONS PAGE PROVIDED AT THE TIME OF ISSUANCE OF THE INITIAL POLICY AND ANY RENEWALS OF THAT POLICY:

(I) A DESCRIPTION OF THE EXACT POLICY AND ENDORSEMENT FORMS PURCHASED BY THE INSURED;

(II) A METHOD BY WHICH THE INSURED MAY OBTAIN, UPON REQUEST AND WITHOUT CHARGE, A PAPER OR ELECTRONIC COPY OF EACH POLICY AND ENDORSEMENT PURCHASED BY THE INSURED; AND

(III) THE INTERNET ADDRESS WHERE THE INSURED'S POLICY AND ENDORSEMENTS ARE POSTED;

(d) THE INSURER SHALL ARCHIVE ITS EXPIRED POLICIES AND ENDORSEMENTS FOR AT LEAST FIVE YEARS AND MAKE THEM AVAILABLE UPON REQUEST; AND

(e) THE INSURER SHALL PROVIDE THE INSURED WITH NOTICE, IN THE SAME MANNER IN WHICH THE INSURER CUSTOMARILY COMMUNICATES WITH THE INSURED, OF:

(I) ANY CHANGES TO THE FORMS OR ENDORSEMENTS;

(II) THE INSURED'S RIGHT TO OBTAIN, UPON REQUEST AND WITHOUT CHARGE, A PAPER COPY OF THE FORMS OR ENDORSEMENTS; AND

(III) THE INTERNET ADDRESS WHERE THE FORMS OR ENDORSEMENTS ARE POSTED.

SECTION 2. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 6, 2014, if adjournment sine die is on May 7, 2014); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2014 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to insurance policies issued or renewed on or after the applicable effective date of this act.

Approved: May 15, 2014